

**FILED**

**FEB 25 2009**

**PATRICK E. DUFFY, CLERK**  
By DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

UNITED STATES OF AMERICA,	)	CR 05-07-M-DWM
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
W. R. GRACE, HENRY A.	)	
ESCHENBACH, JACK W. WOLTER,	)	
WILLIAM J. McCAIG, ROBERT J.	)	
BETTACCHI, O. MARIO FAVORITO,	)	
ROBERT C. WALSH,	)	
	)	
Defendants.	)	
_____	)	

This Order resolves pending motions filed by the Defendants in this case.

Some of the rulings below merely restate rulings made in open court during the

first week of the trial in this matter. The motions are referred to by document number as they appear in the Court's electronic docket. The United States has not responded to any of the pending motions, all of which have been briefed by the Defendants.<sup>1</sup> The government has had an opportunity to be heard in open court on all motions resolved in the Defendants' favor below.

**Doc. No. 921** – The Defendants' joint motion for leave to file motion to preclude the government from using newly-disclosed exhibits is **DENIED**. The Defendants do not contend that any of the additions to the government's exhibit list constitute or are derived from materials not produced in discovery; they simply assert that the evidence has never before been identified on the exhibit list. The government may make reasonable additions to and subtractions from its exhibit list in response to developments in the case, provided the Defendants receive timely notice of all new exhibits. The Defendants' arguments regarding the government's GIS graphics are noted. The Court finds that those concerns are best expressed as objections at trial.

**Doc. No. 934** – The motion by Defendants Walsh, Eschenbach and McCaig

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<sup>1</sup>The Defendants responsible for filing the motions at Doc. Nos. 934, 936, 937, and 942 appear to have failed to comply with Local Rule CR 12.2, which requires counsel for the moving party to "note that all parties have been contacted concerning the motion, and whether any party objects to the motion." The parties are advised that L.R. CR 12.2 remains in effect, and failure to comply with the rule constitutes grounds for denial of any motion.

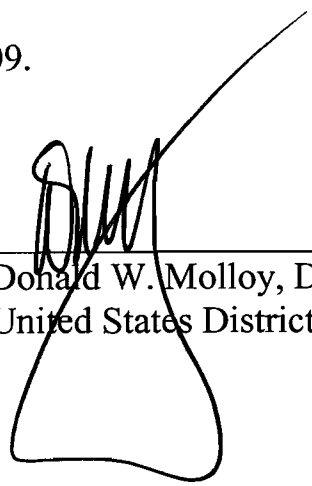
for a judgment of acquittal on the knowing endangerment object of Count I is **DENIED** as stated on the record in open court on February 24, 2009, subject to renewal at the close of the government's case-in-chief.

**Doc. No. 936** – Defendant Grace's motion for a judgment of acquittal is **DENIED** as stated on the record in open court on February 24, 2009, subject to renewal at the close of the government's case-in-chief.

**Doc. No. 937** – Defendant Grace's motion to preclude, or in the alternative limit, the testimony of Art Schauer is **DENIED**. The Defendants' concerns about the witness' testimony can be raised through objections at trial.

**Doc. No. 943** – Defendant Bettacchi's motion to exclude government Exhibit 623A is **GRANTED** as stated on the record in open court on February 25, 2009.

DATED this 25th day of February, 2009.



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Donald W. Molloy, District Judge  
United States District Court